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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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October 23, 1997

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

**Re: *Ex Parte* Submission in IB Docket No. 97-142**

Dear Mr. Caton:

Pursuant to 47 C.F.R. § 1.1206(a), enclosed please find two copies of Aeronautical Radio, Inc.'s October 17, 1997 *ex parte* letter to the Chairman and Commissioners, regarding the above-referenced proceeding. Should you have any questions, please contact me.

Very truly yours,

  
John L. Bartlett  
Attorney for Aeronautical Radio, Inc.

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION  
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Chairman Reed E. Hundt  
Commissioner James H. Quello  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

**Re: *Ex Parte* Submission of ARINC in IB Docket No. 97-142**

Dear Chairman and Commissioners:

Aeronautical Radio, Inc. ("ARINC") submits this reply to the *ex parte* letter of Société Internationale de Télécommunications Aéronautiques ("SITA"), filed September 16, 1997.<sup>1</sup> In that letter, SITA yet again urges the Commission to expand the scope of this rulemaking to include a review of the Commission's frequency management policy regarding the licensing of aeronautical enroute services,<sup>2</sup> an issue that is entirely inapposite to this proceeding.

SITA's *ex parte* letter raises two separate issues:

- First, SITA attempts to extend this proceeding to reach the FCC's rule limiting the aeronautical enroute service to a single licensee per location.<sup>3</sup> This issue relates to

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<sup>1</sup> *Ex Parte* Letter from Albert Halprin, Counsel for SITA, to the Federal Communications Commission (Sept. 16, 1997) [hereinafter SITA *Ex Parte* Letter]. Pursuant to 47 C.F.R. § 1.1206(a), two copies of this letter have been sent to the Acting Secretary for inclusion in the public record.

<sup>2</sup> Aeronautical enroute licenses authorize the provision of radio communications between an aircraft operator's dispatch facilities on the ground and its flight crew in the air relating to safety of life and property in the air. *Id.* § 87.261(a).

<sup>3</sup> *Id.* § 87.261(c).

nationality-neutral policies concerning assignment of scarce spectral resources, an issue excluded from the U.S. commitment,<sup>4</sup> and is beyond the scope of the present rulemaking. ARINC submits that the FCC's existing spectrum management policy as to the aeronautical enroute service have enabled competition to blossom in the air transport industry, while ensuring that essential safety communications facilities are available to all competitors, both domestic and foreign.

- Second, it challenges the FCC's decision to look at proposals for foreign ownership of aeronautical enroute and fixed stations on an ad hoc basis rather than adopting any a priori presumption favoring or opposing such ownership at this time. This issue is appropriately considered in this rulemaking, and ARINC supports the FCC's original conclusion in this matter.

#### **I. THE FCC'S EXISTING AERONAUTICAL ENROUTE SERVICE RULES ARE BEYOND THE SCOPE OF THIS PROCEEDING**

As ARINC demonstrated in its Reply Comments,<sup>5</sup> the domestic frequency management of spectrum that is reserved for non-commercial operational control communications for the safety of life and property in the air is not subject to the United States' commitments to the World Trade Organization's Group on Basic Telecommunications Agreement ("GBT Agreement"), which this rulemaking seeks to implement. The present licensing maximize user choice while ensuring that these vital, but scarce, spectrum resources are available to all aircraft operators—foreign and domestic—under a variety of cooperative arrangements that meet the individual needs of each aircraft operator. SITA has not sought any authorization to provide its AIRCOM service in the United States.

The FCC has successfully managed the aeronautical enroute service by application of its one-licensee per location policy for almost seventy years. This policy has ensured that all aircraft operators have the communication facilities they need to provide for safe and efficient air transport. This policy has worked very well, and the Commission has found that ARINC has

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<sup>4</sup> WTO, Group on Basic Telecommunications Agreement, United States Reference Paper, Item 6 (1997).

<sup>5</sup> See Reply Comments of Aeronautical Radio, Inc., *In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, (Aug. 12, 1997) [hereinafter ARINC Reply Comments].

"managed and coordinated available enroute spectrum in an outstanding manner."<sup>6</sup> As new foreign airlines begin service to the United States, they have been able to secure aeronautical communications, at their option, either from the ARINC common user networks or from in-range stations staffed by the individual airline, or from a combination of these services and facilities. But for the Commission's policies on licensing stations in the aeronautical enroute service, all of the aeronautical frequencies would likely have been assigned long ago to incumbent airlines.<sup>7</sup> Many years before there was a WTO or GBT Agreement, the FCC's policies as to licensing stations in the aeronautical enroute service had removed communications as a potential barrier to entry of foreign airlines into the United States.<sup>8</sup> Effective frequency management has encouraged and facilitated competition in the commercial marketplace.

In order to continue to assign spectrum in an efficient manner, the United States and forty other nations, reserved the right to continue their domestic frequency management policies in their specific commitments to the GBT. The single-licensee per location policy is nationality-neutral and beyond the scope of the present proceeding. Accordingly, the FCC need not address the objections of SITA to this long-standing and successful policy.

## **II. THE GBT AGREEMENT DOES NOT APPLY TO THE AERONAUTICAL ENROUTE SERVICE**

SITA's objection to the FCC's conclusion that it should apply an *ad hoc* approach to foreign ownership of aeronautical enroute licenses is premised on the erroneous assumption that the GBT Agreement and the U.S. commitments apply to this private safety-of-life service. However, the GBT Agreement does not cover private communications services or enhanced services, both of which cover SITA's AIRCOM service. Moreover, as shown in ARINC's Reply Comments, even if the GBT Agreement were to apply to the aeronautical enroute services, these services would still be exempt under the GBT Agreement's safety and national security

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<sup>6</sup> See *Petition for Rulemaking to Amend Part 87*, Memorandum Opinion and Order, RM-3113, ¶ 21 (Jan. 24, 1980).

<sup>7</sup> The management of the spectrum by the air transport industry through ARINC has permitted the tremendous growth in aircraft operations and in passengers and cargo carried over the past forty years to be accommodated in spite of a net reduction in spectrum available to the aeronautical enroute service.

<sup>8</sup> Today, foreign airlines and at least one foreign air force have direct access to more than 270 aeronautical enroute stations in the United States through ARINC, as the licensee.

provisions.<sup>9</sup> Therefore, the FCC is fully justified in continuing its ad hoc approach to foreign ownership of aeronautical enroute licenses.

**A. The WTO's Definition of "Basic Telecommunications Services" Does Not Include Telecommunications Services That Are Not Generally Available to the Public**

SITA's assertion that "private" services are covered by the GBT Agreement misapprehends both ARINC's arguments as well as the Agreement itself. Specifically, SITA overlooks the WTO's distinction between services like private leased lines (which are public offerings subject to the GBT Agreement), and services like ARINC's aeronautical enroute communications (which, because they are not generally offered to the public, are not). SITA instead categorizes both types of services as "private" and wrongly concludes that aeronautical services are thereby covered by the Agreement.

ARINC showed in its Reply Comments<sup>10</sup> that, in its Annex on Telecommunications to the General Agreement on Trade in Services ("GATS"), the WTO made clear that the Annex defined the scope of the GBT's negotiations that were to follow: "Negotiations shall be entered into on a voluntary basis with a view to the progressive liberalization of trade in telecommunications transport networks and services . . . *within the framework of the [GATS]*."<sup>11</sup>

Part of that framework was to specify that only services that are offered to the public generally are covered by the GBT Agreement. Indeed, the Annex repeatedly emphasizes the public-availability component of the services in its purview. For example, Section 2 explicitly limits the scope of the Annex to "public telecommunications transport networks and services,"<sup>12</sup> which are defined as "any telecommunications service required, explicitly or in effect, by a Member [country] to be offered to the public generally."<sup>13</sup>

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<sup>9</sup> ARINC Reply Comments at 8-10.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, April 15, 1994, Legal Instruments—Results of the Uruguay Round, General Agreement on Trade in Services, Decision on Negotiations on Basic Telecommunications (1994) [hereinafter Final Act] (emphasis added).

<sup>12</sup> *Id.*, Annex on Telecommunications, § 2(a), (c).

<sup>13</sup> *Id.* § 3(b).

The Annex's framework thus clearly specifies that only services that are "offered to the public generally" are subject to the GBT accord. While this definition includes so-called "private services," such as dedicated common carrier facilities (*i.e.* private line service), it does not encompass services, like aeronautical communications, that are available only to a restricted class of users for a limited scope of communications.<sup>14</sup> As a result, services that are *not* "offered to the public generally" are not subject to the GBT Agreement or, by extension, to this rulemaking.

SITA offers no support for its assertion that the "scope of the subsequent telecommunications negotiations . . . extended beyond public services . . . to include private services."<sup>15</sup> Rather, SITA merely lists occasions where WTO Member countries use the term "private" or "non-public" in their respective schedules of commitments.<sup>16</sup> None of these schedules, however, pledge to liberalize markets for telecommunications services that are not offered to the public generally. To the contrary, they refer only to access to public or common carrier facilities

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<sup>14</sup> The FCC, for example, found that the aeronautical enroute service was not a commercial mobile radio service, *inter alia*, because it is not made available to the public at large. *Implementation of Sections 3(n) and 332 of the Communications Act*, 9 FCC Rcd 1411, 1448 (1994) (Second Report and Order). The restricted number of users of the aeronautical enroute service are also limited to communicating safety and regularity messages. 47 C.F.R. § 87.261(a) ("Public correspondence is prohibited"). These limits on the content of communications are generally inconsistent with a public telecommunications service. *See, e.g., Frontier Broadcasting Co.*, 24 F.C.C. 251, 258 (1958).

As a practical matter only the flight crew of an aircraft has access to the aeronautical enroute radio service on board an aircraft in flight, and the flight crew may only use the radios to communicate with the airline's dispatchers or other personnel directly involved in the conduct of the flight. In contrast, public air-ground radiotelephone service under Part 22 of the Commission's Rules is a public telecommunications service because it is available to the traveling public at large for communications from the passenger cabin to any telephone station on the public telephone network. The passengers may use the public air-ground telephone for any communications of their own choosing. *See* 47 C.F.R. § 22.99 (defining "Air-Ground Radiotelephone Service" as a "radio service in which common carriers are authorized to offer and provide radio telecommunications for hire to subscribers in aircraft").

<sup>15</sup> SITA *Ex Parte* Letter at 3.

<sup>16</sup> *Id.* at 2.

for services like private networks and closed user groups.<sup>17</sup> Unlike aeronautical enroute communications, anyone can request such private services. SITA's citation to "private" services in the GBT Agreement mischaracterizes the term and therefore is irrelevant to the non-public, non-commercial nature of aeronautical enroute service.<sup>18</sup>

SITA also attempts to broaden the scope of the GBT Agreement through reference to United Nations Central Product Classifications Codes<sup>19</sup> listed in some of the individual country commitments. However, these references do not mean that every service that might be included within a category is covered by the GBT Agreement. For example, some countries list Code 7523 in their specific commitments, but sub-code 75231 ("Data network services") and sub-code 75232 ("Electronic message and information services") in fact describe enhanced and value-added services<sup>20</sup> that are not basic services within the ambit of the GBT.<sup>21</sup>

Moreover, reference to Code 7529 in some scheduled commitments, which purports to include "air-to-ground communications" under sub-code 75299, does not necessarily demonstrate any intent that aeronautical safety services be included in the GBT. To the extent that sub-code 75299 refers to air-to-ground communications, it is derivative of the exclusion of air-to-ground communications from sub-code 75213 ("Mobile telephone services"), which falls under the heading "Public telephone services." Consequently, such communications do not include non-commercial operational control communications. Rather, they describe public air-to-ground telephone services regulated under Part 22 of the FCC's Rules where airline

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<sup>17</sup> For example, although SITA cites Brazil's commitments to show that the GBT Agreement covers services like ARINC's, Brazil liberalizes only "[n]on-public and international services, for Closed User Groups, provided using any network technology, on a facilities-basis: . . . Private leased circuit services." WTO Basic Telecommunications Agreement, Brazil - Schedule of Specific Commitments (1997). Ironically, Brazil has contracted with SITA to implement a single government-sponsored aeronautical datalink system.

<sup>18</sup> The same is true of the WTO pronouncements cited by SITA that refer to "private" services. See SITA *Ex Parte* Letter at 3-4. As discussed above, any such reference indicates only that dedicated common carrier services and the like are included in the GBT's subject jurisdiction, nothing more.

<sup>19</sup> See *Provisional Central Product Code Classifications*, United Nations Statistical Papers, U.N. Doc. ST/ESA/STAT/SER.M/77 [hereinafter U.N. Statistical Papers].

<sup>20</sup> *Id.* at 223.

<sup>21</sup> See ARINC Reply Comments at 7-8.

passengers have mobile telephone access to the public telephone network from within the aircraft.<sup>22</sup>

SITA's public interest arguments also are without weight in the light of SITA's failure to account for the difference between a private service and a service that is not offered to the public generally. Rather than providing other countries with a legal means to circumvent their obligations under the GBT Agreement, an FCC decision recognizing aeronautical enroute services as exempt will in fact have the opposite effect. By acknowledging that only a very clearly specified class of services is excluded from the scope of the Agreement, the FCC will serve to reaffirm the trade rules' otherwise broad sweep over publicly available telecommunications services.

**B. ARINC's ACARS and SITA's AIRCOM Are Enhanced Because They Provide Necessary Format, Content, and Protocol Conversion Among Different Computer Systems**

Both ARINC's ACARS and SITA's AIRCOM services are by definition enhanced services that conform to ARINC Characteristic 620, which sets forth standards for the ground operation of the datalink, and to ARINC Characteristics 597, 724 and 724B, which delineate the airborne portion of the system. SITA attempts to avoid this conclusion by asserting that "the data sent by SITA's users is the same as the data received by them."<sup>23</sup> This is not, however, the legal standard for whether a service is enhanced. Although the substance of the data may be unchanged, the protocol and format of the information is changed by both of these systems, and the systems act on the content of the information. This makes AIRCOM an enhanced service.

The WTO Telecommunications Annex expressly excludes from its definition of a "public telecommunications transport service" services that involve "any end-to-end change in the form or content of the customer's information."<sup>24</sup> The FCC rules define "enhanced services" as those that "act on the format, content, code, protocol, or similar aspects to the subscriber's information."<sup>25</sup> ACARS and AIRCOM are enhanced services because they necessarily involve format, content, and protocol conversion.

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<sup>22</sup> U.N. Statistical Papers at 223-24.

<sup>23</sup> SITA *Ex Parte* Letter at 4 n.14.

<sup>24</sup> Final Act, Annex on Telecommunications, § 3(b).

<sup>25</sup> 47 C.F.R. § 64.702(a).



ACARS and AIRCOM must reformat the messages received from an airline host computer over the ground network or received from the aircraft management unit over the internal airborne database in order to transfer information between these user-provided end systems. This reformatting acts on the message labels and the content of messages in order to permit the dissimilar systems to transfer information. The airborne equipment and the ground-based systems require different formats to process the information and route them to their destinations within the aircraft and the airlines' ground data processing and dispatch systems. ACARS also acts on the content of some of the messages to improve its resource management.

ACARS and AIRCOM also convert the application protocols from those used on the ground side to the ACARS application protocol so that the ground-based computer can communicate with the ACARS management unit in the aircraft and vice versa. Consequently, the services are enhanced and, for the reasons explained in ARINC's Reply Comments, are beyond the ambit of the GBT Agreement.<sup>26</sup>

### **C. The Aeronautical Enroute Service Is Necessary to the Safety of Flight**

The aeronautical enroute service is a safety service under domestic and international regulations. SITA asserts that the safety exception to WTO only applies where it is "*necessary to protect safety*."<sup>27</sup> The prudent frequency management policy of the FCC is necessary to safety.

The aeronautical enroute service is clearly a safety service under international regulations: the aeronautical mobile (R) service is reserved for communications relating to "safety and regularity of flight" along air routes.<sup>28</sup> Under Part 87 of the Rules, aeronautical enroute stations are limited to communications relating to "the safe, efficient and economical operation of aircraft."<sup>29</sup>

SITA attempts to minimize the importance of the aeronautical enroute service by claiming that air traffic control services are provided by the Federal Aviation Administration, not

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<sup>26</sup> ARINC Reply Comments at 7-8.

<sup>27</sup> SITA *Ex Parte* Letter at 5 (emphasis in original).

<sup>28</sup> ITU Radio Reg. 3630 (543.1).

<sup>29</sup> 47 C.F.R. § 87.261(a).

by aeronautical enroute providers such as ARINC or SITA.”<sup>30</sup> In fact, air traffic communications are handled over the aeronautical enroute service by voice and data facilities licensed to ARINC. These communications include all air traffic control communications in the oceanic Flight Information Regions (“FIRs”) assigned to the United States, predeparture clearance, air terminal information service, terminal weather information for pilots, and final release onto the North Atlantic track system. These messages are all traditional air traffic communications.

Moreover, the aeronautical enroute service is necessary for the safety of flight. In the United States, Section 121.99 of the Federal Aviation Regulations<sup>31</sup> requires United States domestic and flag air carriers to provide operational control communications between their dispatchers and their aircraft over their entire route structure. Operational control communications are also safety related. They cover aircraft diversions, airframe monitoring, correction of mechanical problems, in-flight emergencies, and the like. Without aeronautical enroute facilities, U.S. airlines would not be permitted to operate by the FAA.

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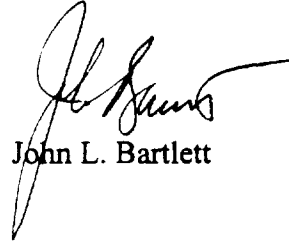
<sup>30</sup> SITA *Ex Parte* Letter at 6.

<sup>31</sup> 14 C.F.R. § 121.99.

## CONCLUSION

SITA's *ex parte* statement thus fails to provide the FCC with any information or reasons to support any change in the Commission's current *ad hoc* approach to foreign ownership of aeronautical enroute licenses or to establish that the aeronautical enroute service rules are within the scope of this proceeding.

Very truly yours,

A handwritten signature in black ink, appearing to read "John L. Bartlett", with a long horizontal flourish extending to the right.

John L. Bartlett

cc: Regina Keeney  
Diane J. Cornell  
Robert McDonald  
Kathy O'Brien  
Susan O'Connell  
Adam Krinsky  
John Giusti  
Douglas Klein  
Marcus Wolfe  
Albert Halprin, Counsel for SITA